

Judge: Timothy W. Dore
Chapter: 13
Hearing Date: February 01, 2012
Hearing Time: 9:30 a.m.
Hearing Location:
U.S. Bankruptcy Court
700 Stewart St #8106
Seattle, WA 98101
Response Date: January 25, 2012

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

JULIAN FLORES,

Debtor(s).

IN CHAPTER 13 PROCEEDING
NO. 11-20512-TWD

OBJECTION TO MOTION TO CONFIRM
AMENDED CHAPTER 13 PLAN

K. Michael Fitzgerald, Chapter 13 Trustee, objects to the debtor's Motion to Confirm Amended Chapter 13 Plan:

On December 9, 2011, the Court denied confirmation of debtor's plan (Docket No. 12) and amended plan (Docket No. 22). The Trustee objected to debtor retaining two parcels of real property that are significantly over-encumbered (Docket No. 18). Rather than addressing the Trustee's concerns stated in the objection and at the December 7, 2011 hearing, the debtor filed an amended plan (Docket No. 30) providing for surrender of property at 30414 1st Place South, Federal Way, Washington in Section V, but then added the following provisions in Section XII:

2. Debtor's family members live in the property located at 30414 1st Place S, Federal Way WA 98003. Debtor is listing the property as surrendered, although they will continue to make payments on the first mortgage.

3. Despite listing the property as surrendered, Debtor will file an adversary proceeding to strip of [sic] the second, wholly unsecured lien on the property at 30414 1st Place S, Federal Way WA 98003.

Sections V and XII of the amended plan are contradictory. The Trustee once again objects to debtor's retention of the real property and to debtor paying any mortgage payments on this property, not to mention that any mortgage payments on delinquent mortgages should be paid by the Trustee. Local Bankr. R. 3015-1(j).

Objection to Motion to Confirm Amended
Chapter 13 Plan - 1

Chapter 13 Trustee
600 University St. #2200
Seattle, WA 98101-4100
(206) 624-5124 FAX 624-5282
Ent. 01/25/12 14:38:30 Pg. 1 of 2

1 In addition, the debtor is not entitled to claim deductions on Form B22C for surrendered
2 real property. American Express Bank v. Smith (In re Smith), 418 B.R. 359 (B.A.P. 9th Cir.
3 2009). The debtor's Form B22C lists deductions for the 30414 1st Place South, Federal Way,
4 Washington property on Lines 47, 48 and 57 (the \$1,295.00 deductions on Lines 47.b. and 57.a.
5 appear duplicative). Those deductions total \$2,656.67. Removing those deductions would result
6 in a positive figure on Line 59 of \$419.01, which means debtor has a projected disposable
7 income figure of \$25,140.60 and that amount should be included in Section IV.E.2. of debtor's
8 plan. The Trustee pointed out these issues at the December 7, 2011 hearing, but debtor and her
9 counsel have failed to address them.

10 The debtor's response to the Trustee's motion to dismiss contains the following
11 statement: "Debtor's schedules do not include expenses for upkeep of the rental property that
12 could be avoided if he no longer owned the property" (Docket No. 24). The debtor's Schedules I
13 and J disclose \$1,295.00 rent and a \$1,295.00 mortgage payment (Docket No. 13). The debtor
14 does not propose to cure any arrears on the mortgage, which were listed as \$4,000.00 in debtor's
15 original plan (Docket No. 12). Retention of this property is of no benefit to the debtor and,
16 moreover, negatively impacts unsecured creditors. The property should have been surrendered
17 without any conditions.

18 Given that the debtor has failed to address these issues and that retention of this property
19 negatively impacts unsecured creditors, the debtor's motion should be denied. This case was
20 filed over four months ago and these issues were all previously raised. The Trustee reserves the
21 right to assert additional bases for his objection.

22 WHEREFORE, the Chapter 13 Trustee requests that the Court deny debtor's Motion to
23 Confirm Amended Chapter 13 Plan.

24
25 Dated this 25th day of January, 2012

26 /s/ Jason Wilson-Aguilar, WSBA #33582 for
27 K. MICHAEL FITZGERALD
28 Chapter 13 Trustee

Objection to Motion to Confirm Amended
Chapter 13 Plan - 2

Chapter 13 Trustee
600 University St. #2200
Seattle, WA 98101-4100
(206) 624-5124 FAX 624-5282
Ent. 01/25/12 14:38:30 Pg. 2 of 2